

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

BRUBACHER EXCAVATING, INC.

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 542, AFL-CIO

Case No. 4-CA-32437

and

MID-ATLANTIC REGIONAL ORGANIZING
COALITION a/w LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO

Case No. 4-CA-32332

Deena Kobell, Esq., for the General Counsel.
Walter Flamm, Esq. and Corey Higgins, Esqs.,
for the Respondent.
Frank Bankard, for the International Union of
Operating Engineers, Local 542, AFL-CIO.
Perry Ellison, for Mid-Atlantic Regional Organizing
Coalition.

DECISION

Statement of the Case

GEORGE ALEMÁN, Administrative Law Judge. This case was tried in Philadelphia, PA on March 16-18, 2004. The charge in Case 4-CA-32437 was filed by the International Union of Operating Engineers, Local 542, AFL-CIO (herein Local 542), on September 17, 2003, and amended on September 26 and November 25, 2003; the charge in Case 4-CA-32332 was filed by Mid-Atlantic Regional Organizing Coalition a/w Laborers' International Union of North America, AFL-CIO (herein MAROC), on July 31, 2003 and amended on November 25, 2003.¹ Pursuant to said charges, the Regional Director for Region 4 of the National Labor Relations Board (the Board) issued separate complaints, which were subsequently consolidated for hearing, alleging that Brubacher Excavating, Inc., (herein the Respondent or "BEI"), had violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

Specifically, the consolidated complaint alleges that the Respondent, through its owner

¹ Unless otherwise indicated, all dates herein are in 2003. Reference herein to testimonial evidence given at the hearing is identified by the transcript (Tr.) and page number(s); reference to a General Counsel, a Respondent, or a Joint exhibit is respectively identified herein as "GCX", "RX"; and "JX" followed by the exhibit number; reference to the General Counsel's brief or to the Respondent's brief will be identified, respectively, as "GCB" or "RB" followed by the page number(s).

and president, Benjamin Brubacher, violated Section 8(a)(1) of the Act by telling alleged discriminatee and purported job applicant, Frank Bankard, a Local 542 union organizer, that it would never hire him as long as he, Brubacher, was alive, and by telling Bankard and other Local 542-affiliated job applicants to “go screw yourselves” when Bankard asked Brubacher why he would not consider him and the other applicants for employment. It further alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing, since on or about April 29, to accept the referral for employment from Adecco, an employment staffing agency with which it regularly does business, of alleged discriminatee Perry Ellison, and by failing and refusing, since on or around May 5, to hire Bankard for positions for which he was qualified, because of their membership in or activities on behalf of MAROC and Local 542, respectively.² The Respondent, in a timely-filed answer, has denied engaging in any unlawful conduct.

At the hearing, all parties were afforded a full and fair opportunity to call and examine witnesses, to present oral and written evidence, to argue orally on the record, and to file post-trial briefs. Based on the entire record in this proceeding, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent,³ I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a Pennsylvania corporation with an office and place of business in Bowmansville, PA, is involved in a variety of construction-related work such as grading, excavating, paving, earth-moving, rock blasting, crushing, pipe utility installation, concrete work, roadway construction, and other related services. During the past 12 months, the Respondent has, in the course and conduct of its business operations, purchased and received at its Bowmanville’s facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent also admits, and I find, that Local 542 is a labor organization within the meaning of Section 2(5) of the Act. As to MAROC, the Respondent denies that it qualifies as a labor organization under Section 2(5), noting in this regard that MAROC does not have a constitution or bylaws, does not represent any employees for collective bargaining purposes, has no collective bargaining agreement with it or any other employer, collects no dues from employees, and does not adjust grievances on behalf of employees (RB:15).

Section 2(5) of the Act defines a “labor organization” as “[a]ny organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

The record makes clear that MAROC is affiliated with, and serves as the organizing arm

² The offices of the International Union of Operating Engineers are located 1375 Virginia Dr., Fort Washington, PA.

³ The General Counsel on brief has filed an unopposed motion to correct certain inaccuracies in the transcript. The motion is hereby granted as the corrections are necessary and proper to ensure an accurate and complete record. The corrections have been made part of the record as GCX-35.

of the Laborers' International Union of North America (herein Laborers), which the Respondent readily stipulated is a Section 2(5) labor organization. MAROC abides by the Laborers bylaws and generally engages in organizational campaigns on behalf of the Laborers. Ellison testified, without contradiction, and credibly in my view, that he has been employed by MAROC as an organizer for five years, and that MAROC employs some fourteen other organizers, whose main function is to "go out and talk to employees that work for unorganized companies about being organized, about joining the union." He testified that employees participate in MAROC by helping it in the organizational campaigns through handbilling, picketing, and other related activities. Ellison further testified that as a MAROC organizer, he has taken part in thirteen organizational campaigns all of which resulted in the targeted employers becoming signatories to the Laborers Master Agreement. He explained that once the employer signs on to the Laborers agreement, he turns the handling of that agreement to a business agent. The above evidence convinces me, and I so find, that MAROC indeed qualifies as a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Factual background

1. Local 542 and MAROC's efforts to organize BEI and related matters

The Respondent has been in operation since around 1970, and was founded by its owner and president, Benjamin Brubacher. Keith Brubacher is Respondent's Vice-President of Operations,⁴ Joe England its Vice-President of Sales and Estimating, Joe DeJulius its Chief Financial Officer, and Jason Krause its Human Resources Manager.⁵ As of the date of the hearing, the Respondent's complement of employees fluctuated between 300-340 employees. The record reflects that in 2003, the Respondent at times used a staffing employment service, known as Adecco, to obtain temporary workers for its projects.⁶

Frederick Borgmann has been president of Local 542 since 1993, and a Local 542 organizer since 1983. Michael Grant is Local 542's business representative. Frank Bankard is Local 542's head organizer, and has held that position since 2001. The record reflects that, since at least May 2000, Local 542 has been trying to organize Respondent's employees. Bankard testified that on May 30, 2000, he received a phone call from Brubacher who purportedly complained about Local 542 organizers being on his jobsites, and told Bankard to stay off his jobsites. Bankard then thanked Brubacher for recognizing that he was doing his job,

⁴ Brubacher identified his son, Keith, as Respondent's Chief Executive Officer.

⁵ Brubacher is an admitted supervisor within the meaning of Section 2(11) of the Act (Tr. 218). Although he is the owner and president of BEI, Brubacher testified to having little or no management responsibilities at BEI, claiming instead that he basically serves as a cheerleader and mentor to other employees, that his son Keith Brubacher "runs the company" and "manages the entire operations," and that Krause has control over labor relations and the one who, in conjunction with other managers, makes the final decision with respect to employee hiring. He admitted, however, that while Krause reports to K. Brubacher, the latter reports to him and that he, as company president, retains authority to overrule decisions made by others. Brubacher's above testimony regarding his lack of involvement in BEI's management, including his claim that he is not involved in the hiring process, was evasive and not very convincing and, hence, found not to be credible.

⁶ Adecco is a division of Way Services, Inc.

but made clear he had no intentions of staying off the jobsites because they were not his [Brubacher's] jobsites and Brubacher only worked there.⁷ Brubacher, according to Bankard, responded that he did not believe in the union's philosophy but that if Bankard and he got together, Bankard would see that he, Brubacher, was not a bad guy.

One week later, at Brubacher's request, and following calls Brubacher received from Bankard, Brubacher met with Bankard at a restaurant in the King of Prussia, PA area. According to Brubacher, Keith Brubacher, and England were also in attendance. Bankard recalls another individual, Joey Bulema, whose position with the Respondent is unknown, also being present, as well as Bob Schmitt from Local 542. Brubacher explained that his reason for calling the meeting was to meet face to face with Bankard, whom he had not personally met before, and to explain that while he did not have a problem with the Local 542, he did have a problem with its tactics and personalities and would, therefore, have difficulty working together. (Tr. 318).

Brubacher's recollection of what was said at the meeting is as follows. Bankard, he recalls, asked that Local 542 people be put to work on Respondent's projects. Brubacher replied that he did not see how that could be done as he already had his employees trained for each piece of equipment, and it would not be fair to send his employees home while putting Local 542 members on the job. He further told Bankard that he did not think they could have an agreement with Local 542 as the Respondent already had workers and did not need any more. Bankard told Brubacher that if Respondent received a project that came within Local 542's jurisdiction, Bankard expected the Respondent to use Local 542 people. Brubacher declined to commit to any such condition, stating that he did not intend to replace his employees with others from Local 542.

Bankard's recollection of this meeting is that he basically described to Brubacher what Local 542 had to offer him, and Brubacher expressed his belief that all the union would do is require him to take on an employee and to pay him for no work. Brubacher also told Bankard that he rarely does work in the five county area falling within Local 542's jurisdiction and, when Bankard mentioned seeing him at a jobsite in Doylestown, PA, presumably within Local 542's area, Brubacher replied he was only doing an assignment for a special client. Bankard then proposed an arrangement whereby whenever Brubacher was in the area, he could call Bankard and they could then enter into a few site specific project agreements. The meeting apparently ended that point. Bankard claims that the following day, he sent Brubacher a letter thanking him for the meeting and expressing the hope that Brubacher would consider using Local 542 members on his future projects.

Ellison testified that he first learned of BEI when MAROC moved its office to where the Operating Engineers Union was situated at 1375 Virginia Dr., in Fort Washington, PA. He recalled that the Operating Engineers were, at the time, engaged in an ongoing campaign to organize Respondent's employees, and that because the Respondent's work involved the use of laborers, MAROC felt BEI would be a good target for its own organizational campaign since the MAROC laborers performed essentially the same work as that performed by Respondent's employees. To that end, Ellison claims that in June or July 2003, he and other MAROC representatives began going to Respondent's projects and talking with, and distributing leaflets some 2-3 days a week to, employees. On or around March 24, MAROC modified its tactics and began a salting campaign against the Respondent.

⁷ Bankard explained that he was entitled to be at the jobsites because Local 542 was signatory to contracts with employers working at the sites in question.

On March 20, 2003, Bankard, on behalf of Local 542, was invited to, and attended, a career fair at Pennsylvania College of Technology (PCT), a vocational-technical school which trains students in a variety of crafts and which maintains a heavy equipment division. Bankard, along with Borgmann and Grant, arrived at around 8:00 a.m. and began setting up the Local 542 booth they were assigned by putting up a large banner containing Local 542's name and insignia, and placing literature and other items on a table in the booth for students to take or to be distributed. He recalls seeing Brubacher and Krause walking into the large room where the booths were located at around 8:45 a.m. and gave the following account of several discussions he purportedly had with Brubacher that day.

According to Bankard, when Brubacher entered and saw the Local 542 banner, he came over and asked Bankard what he was doing there. Bankard replied that he was there for the same reason as Brubacher, to which the latter responded, "We'll see about that," and walked away (Tr. 123). Bankard then observed Brubacher speaking with the Dean of the school while pointing in his direction. Brubacher returned a short while later, pointed his finger at Bankard, and stated that Bankard was evil, that what Bankard and the Union were doing was evil, and that Bankard "ought to read the Bible, it's in the Bible." (Tr. 124). When Bankard asked if the Bible contained such a reference, Brubacher said it did and that he could find it in Psalm No. 40. Bankard pulled out his Palm Pilot, a hand-held computer device, uploaded a copy of the Bible, and searched for Psalm No. 40. After reading Psalm No. 40, Bankard told Brubacher that Psalm No. 40 made no reference to unions or unions being evil. When shown Psalm No. 40, Brubacher told Bankard that he meant to say Psalm No. 41. Bankard proceeded to read Psalm No. 41 and again told Brubacher that this latter citation also made no mention of unions, at which point Brubacher replied that maybe its the wrong passage and walked away.

Bankard claims he then turned to working the booth and talking to students who dropped by. Shortly thereafter, Brubacher returned and told Bankard that he had nerve sending him a letter after their lunch meeting a year earlier, and the audacity to believe that he, Brubacher, would consider using Local 542 people at his jobsites. When Bankard replied that he indeed believed this to be the case, Brubacher responded, "Hey, as long as I'm alive, I'll never hire or use any of your people." Bankard then asked Brubacher about his health, at which point the latter headed back to speak with the Dean. Brubacher, according to Bankard, returned a few minutes later and told Bankard, "You know what? You're a real scumbag, who probably never goes to church." Bankard responded that he, Bankard, is a Catholic who misses at most two masses a year, to which Brubacher replied, "You people don't even read the Bible." Brubacher went on to say that he hires "good Christian...Mennonite and Amish people," and that he hated Bankard and considered him and the union people to be a big joke. After some more banter between the two, Brubacher left.

Bankard contends that Brubacher returned with Krause a short while later, introduced Krause to him as his Human Resources guy, and then remarked that Krause hated unions even more than he did, even though Krause's family was in a union. Bankard asked Krause what union his family was with, and Krause replied that his father and brother were with Boilermakers Union Local 13, and that he, too, had been with Local 13 for years. Bankard commented that he had a lot of admiration for Local 13, and asked Krause why went into the construction business and did not stay with the Boilermakers trade. Krause responded that he had flunked the test, at which point Bankard turned and asked Brubacher, "Do you always put people in top positions that flunk tests?" At this point, Brubacher, according to Bankard, went to speak with the Dean again. Brubacher returned a short while later and remarked to Bankard that his reference to the latter and unions being evil could be found in Psalm No. 141. When Bankard opened his Palm pilot to again look up the reference in the Bible, Brubacher asked, "What the

hell is that?", and Bankard replied, "You read it, it's the Bible." Brubacher responded, "That's a bunch of crap," and stormed off. (Tr. 126-127).

Brubacher testified as follows regarding the March 20, incident. He arrived at the PCT alone around 8:00-9:00 a.m., and noticed, as he walked in the door, that Local 542 people were present. He was immediately approached by Bankard and Borgmann who, in what he perceived as a mocking tone, asked Brubacher how he was doing and what he was doing there. He recalls someone remarking that he lived like a king and how could he live like a king and have slaves working for him. He could not recall the entire conversation that occurred as he was walking in. He recalls that a subsequent conversation occurred in which Borgmann made reference to the fact that he knew Brubacher's father and that the father used to be a Mennonite. At one point during that conversation, both Borgmann and Bankard told Brubacher that they too were "born again Christians," to which he replied that he found it interesting that they were all "born again Christians" and yet couldn't get along. Brubacher recalls making reference to Psalm No. 40 in the Bible, and Bankard taking out a Palm Pilot, pulling up the Bible, and stating that there was no Psalm No. 40, and that the Book of Psalms only went up to No. 100. Brubacher disputed Bankard's claim and commented, at one point, that he prayed every morning because of the harassment he felt he received from Local 542. Some more discussion about the Bible and Jesus took place, according to Brubacher. Brubacher explained that throughout the day, Bankard and Borgmann mocked, needled, baited, and heckled him, and, at one point, Borgmann implicitly threatened him by saying "We're going to get you, Ben, just wait, we're going to get you." Asked if he ever told Bankard, Borgmann or anyone else that day that he "wouldn't hire them as long as he was alive," Brubacher responded, somewhat evasively, "I wouldn't hire anybody because I don't hire people." Asked again if made such a statement that day, Brubacher stated, "Not to my recollection." Brubacher denied calling Bankard a "scumbag." Finally, Brubacher claims that he did not introduce Krause to Bankard that day because there was no need to as Krause, he contends, had previously met Bankard. (Tr. 329).

Krause gave the following account of what transpired at the March 20, event at the PCT. He arrived at PCT early and was setting up Respondent's booth and talking to another contractor when Bankard, whom he knew of but had not personally seen or met before that day, walked up to the contractor asked the latter, "Hey, how ya doing?" Bankard then turned and asked Krause how he was doing, and why Krause did not hire him some two years earlier. Krause responded, "Well, you know how it is, we did what we had to do." Krause stated he did not want to get into a "match" with Bankard and, consequently, just "blew him off."⁸ A short while later, Krause saw Brubacher and others from BEI entering the area, and then saw Bankard approach Brubacher and begin to heckle him. Krause admits that he was not involved in, and consequently did not know of, the various conversations Bankard and Brubacher had that day, but claims that there were many conversations held between the two. (Tr. 445-446). He explained that he deliberately avoided getting into any conversations with Bankard "for fear

⁸ Krause's testimony in this regard is somewhat puzzling. In his testimony, for example, Krause made no mention of Bankard introducing himself to Krause or to the contractor with whom Krause was speaking when Bankard approached. His testimony in this regard, as noted, is that Bankard approached the contractor and asked how the latter was doing, and then turned to Krause and asked why Krause had not hired him two years earlier. By his own admission, however, Krause had never before met or spoken with Bankard prior to that day. Yet, Krause claims he told Bankard that the Respondent "did what we had to do," without so much as asking Bankard who he was or what he was referring to. I found his testimony in this regard unconvincing and not particularly credible.

of something being used against me....” He characterized the conversations Bankard had with Brubacher as unfriendly, unprofessional, and embarrassing. Yet, he conceded that he was not present for all the conversations the two held that day and, therefore, did not hear all that was said between the two. Asked if he overheard Brubacher tell Bankard, “I won’t hire you as long as I live,” Krause replied that he had not. (Tr. 449). Krause did recall speaking with Borgmann that day. Specifically, he recalled Borgmann saying that the Respondent was going to be losing 23 of its employees that year because said employees were in Local 542’s office signing up to work with the Union. Krause replied that that was okay with him, “if that’s what they are interested in” (Tr. 450-451).

Bankard’s version of what transpired was corroborated by Borgmann and, to some extent, by Grant. Thus, Borgmann claims he was present when Brubacher entered the building and, on seeing Local 542’s booth, ask Bankard what he was doing there, heard Bankard respond, “Probably the same thing you’re doing here,” and heard Brubacher reply, “We’ll see about that.” He claims to have witnessed several other conversations between Bankard and Brubacher that day, including the exchange described by Bankard in which references to the Bible were made. Borgmann did recall Brubacher becoming highly indignant at one point and calling Bankard “a prick.” He also heard Brubacher during one of those conversations say to Bankard, “I’d never use your people as long as I’m alive.” When Bankard asked Brubacher why he would not consider using Local 542 people, Brubacher, according to Borgmann, replied that he only hired “good Christian people -- Mennonite or Amish” and further remarked something to the effect that “you people don’t even read the Bible.” (Tr. 185-186).

Although Grant’s recollection was not as clear as either Bankard’s or Borgmann’s, he nevertheless testified to hearing Brubacher tell Bankard that he would “never hire our people.” I credit Bankard’s, as well as Borgmann’s and Grant’s, account of what was said by Brubacher during the March 20, open house at the PCT. Bankard’s version, as noted, is corroborated by Borgmann and, to some extent, by Grant. Brubacher’s version, on the other hand, was not corroborated by Krause, for the latter, as noted, admitted that he did not hear, and indeed, deliberately avoided, many of the verbal exchanges that took place between Bankard and Brubacher that day. As to the statement attributed to Brubacher about never hiring Local 542 people as long as he was alive, Krause simply stated that he did not hear the comment being made by Brubacher. However, given his admission that he was not present for many of the conversations Bankard and Brubacher had that day, it is quite possible for Brubacher to have made the remark during one of those conversations Krause was not privy to. Accordingly, I find that on March 20, Brubacher told Bankard and the other Local 542 representatives that were present at the PCT, “Hey, as long as I’m alive, I’ll never hire or use any of your people,” that he further repeatedly referred to unions, including Local 542, as “evil” and “no good,” and that, on introducing Krause to Bankard, stated that Krause hated unions even more than he, Brubacher, did.

Another incident occurred on May 3, between Brubacher and Local 54 and MAROC representatives during an open house held by Brubacher at Respondent’s offices. The record reflects that Bankard, Borgmann and others showed up outside the facility and began picketing, handbilling, carrying signs, and using a bullhorn. One representative wore a large rat costume (see RX-8). There is some disagreement between Brubacher on the one hand, and Borgmann and Bankard on the other, as to what was said or took place that day.

Brubacher’s version is that the open house was intended as a “fun day” for friends, family, and the community and that food and other items had been laid out for that purpose. He testified that as he was inside with his wife, one of his managers approached and told Brubacher that some of his friends were outside and wanted to see him. When he went out, he

found Borgmann and Stanley Sanders,⁹ who told Brubacher that they had heard about the gathering and had come for the cookies and donuts. Brubacher claims that several people and children who were present that day were frightened by the “bad and negative” things that were being said by the picketing individuals, and believed that they were disgruntled employees.

5 Brubacher explained to his guests that these were not employees of his. According to Brubacher, the picketers were stopping and blocking traffic, and interfering with traffic coming into his property, and heckling people as they entered or left the facility. (Tr. 331). He contends that the picketers stationed themselves both on and off his property. At one point, Brubacher, with a video camera in hand, claims he went out and told the individuals on his property to leave or he would call the police (Tr. 337). He recalls that after telling Borgmann to kindly move their vehicles off the highway because were blocking traffic, Borgmann and others cursed at him, with Borgmann saying, “F__k you, Ben Brubacher.” A short while later, Brubacher handed his video camera to another individual and went inside to call the police. Brubacher admits telling the picketers at one point that they would have to move their sound equipment off his property or he would destroy it. (Tr. 339).

20 Borgmann and Bankard, not surprisingly, provided a somewhat different version of the May 3, incident. Borgmann admits he and Sanders went to Respondent’s office during this open house and met with Brubacher. When Brubacher asked what they were doing there, Borgmann claims he asked Brubacher if he was accepting job applications. Brubacher replied he was not, and that they had no business being there, stating, “this is my day.” Borgmann then offered Brubacher a copy of the union literature that was being distributed outside, but Brubacher refused to take it and told them to get out of his office.

25 Bankard testified that when he and the other union representatives arrived at Respondent’s facility, Borgmann and Sanders asked if he wanted to go in with them to ask Brubacher if he was accepting job applications during the open house. Bankard replied that he did not, as he was there only to picket and distribute literature. According to Bankard, Borgmann and Sanders were inside the Respondent’s office for no more than a minute, when 30 Brubacher comes out and tells him to get out as he does not want them on his property, that he was going to call the police if they did not do so, and that Bankard and the others were not going to ruin his day. Bankard replied that they were not on his property, at which point Brubacher told him that their cars were parked illegally and repeated that he was going to call the police. Bankard then asked Brubacher, “How come you never hire?”, to which Brubacher responded, “Go screw yourself.” Brubacher denied making any such remark. 35

40 I credit Brubacher’s denial in this regard as he did not strike me as someone who used such crude and offensive language towards others. In so doing, I further find it more likely than not that had such a remark been made by Brubacher, it would have been expressed in an angry and loud manner, sufficiently so that others standing nearby, including Borgmann and/or the other union representatives who were taking part in the picketing and leafleting, would have heard it. Brubacher, however, admitted he heard no such remark being made. Nor do I believe that any of the other union representatives who were present heard Brubacher make the alleged remark for, if they had, the General Counsel, I am convinced, would have called them as 45 witnesses to corroborate Bankard’s claim. The General Counsel did not do so. Accordingly, Bankard’s testimony about Brubacher telling him to go “screw” himself is found not to be credible.

50 ⁹ Sanders was identified by Borgmann as a member of Laborers Local 54 who was affiliated with MAROC (Tr. 129).

Bankard claims that Brubacher then went down the street to talk with the neighbors whose property adjoined the area where the cars belonging to the union representatives were parked. Bankard denies using any profanity against Brubacher that day. When he returned moments later, Brubacher told Bankard to leave peacefully, and to remove the sound system or he would smash it. Bankard replied that the sound system was not on his property, and that he and the other union representatives were not leaving. Brubacher again stated that he was going to call the police. The police were in fact called at some point that day. Borgmann described the encounter between Brubacher and Bankard as "pretty ugly for a while," but placed most of the blame on Brubacher who, Borgmann claims, kept insisting that they get off his property, that they had no right being there, and who threatened to smash the Union's sound system and call the police. (Tr. 187).

2. Bankard's job applications with BEI

On May 5, Bankard, Borgmann, and several other union organizers, in response to a help-wanted ad placed by Respondent the previous day in the *Reading Eagle*, a local newspaper (see GCX-7), went to the Respondent's office to apply for work as either a truck driver or equipment operator, two of the positions advertised for in the May 4, ad. The Respondent does not contend that Bankard was not qualified for the positions for which he was applying, and in fact stipulated that Bankard possessed the skills and expertise necessary to perform the functions of truck driver and/or equipment operator (Tr. 11). Bankard testified that as they were filling out applications, Krause walked in and asked, "What are you guys doing here?" Borgmann replied that they were responding to the Respondent's ad and filling out job applications. Bankard claims he went over Krause and told him he had been there on several prior occasions to apply for work and never received an interview. He then asked Krause if he and the others were going to get an interview that day, to which Krause purportedly replied, "Not you guys." When Bankard asked what he meant by his remark, Krause walked away without commenting. Krause did not specifically deny having such an encounter with Bankard on May 5, or telling Bankard that he and the others there that day would not be getting interviews.

Bankard claims he then spent some twenty minutes completing his application. On his application, Bankard listed Local 542 as his current employer, and the names of three other past employers, e.g., Reilly Sweeping, Inc., J.A. Taddei Corp., and Bi-State. Under Reilly Sweeping, Inc. he cited "signed union contract" as the reason for leaving Reilly's employment, and "able to work out union agreement" as the reason for leaving J.A. Taddei's and Bi-State's employ. (See, GCX-8). Bankard testified that all information provided in his job application was accurate. Bankard testified that before leaving the Respondent's office on May 5, he inquired as to how long the applications remained valid and was told 30 days.

Krause testified that while he was reviewing Bankard's application, he "guessed" that he initially tried calling Reilly Sweeping, Inc. to verify Bankard's employment record, but that no one at Reilly Sweeping returned his call. He claims he next called J.A. Taddei, explaining that he found it somewhat odd that Bankard would claim to have signed a union agreement with Taddei since he was not certain whether Taddei was a union contractor. Krause purportedly spoke with Gina Taddei, who serves as Taddei's human resources person. Krause gave somewhat different accounts of what he purportedly asked Gina Taddei during that phone conversation. Initially, for example, he claims he told Gina Taddei an applicant for employment with BEI had stated on his application that he had worked for Taddei and had left J.A. Taddei after working out a union contract with it, that the applicant had "signed the union contract for your company." Gina Taddei purportedly replied that J.A. Taddei had not signed any such agreement. However, he subsequently testified to only having asked Gina Taddei if J.A. Taddei "is signed up with the union." (Tr. 438; 442). Krause claims that based on Gina Taddei's response, he concluded that

Bankard had falsified his application by claiming to have gotten J.A. Taddei to sign a union contract. Krause explained that he read Bankard's statement in his job application about having obtained a union agreement with J.A. Taddei to mean that Bankard had been able to get J.A. Taddei to sign an actual collective bargaining agreement with Local 542.

Krause claims that about one month after his phone conversation with Gina Taddei, he met her at a meeting of the Association of Building Contractors (ABC), a contractors' association, and learned from her that J.A. Taddei, in fact, had entered into a settlement agreement under which Bankard, at the time employed by J.A. Taddei, "was given a large sum of money to go away." (Tr. 440). Krause did not ask Gina Taddei if J.A. Taddei had signed anything other than a standard collective bargaining agreement. Krause admitted that he was not all that knowledgeable about the various types of union agreements that parties may enter into, but insisted, purportedly based on what Gina Taddei told him, that Bankard was simply paid to go away and had not signed any union agreement with J.A. Taddei.

Called by the Respondent to corroborate Krause's testimony, Gina Taddei testified to having spoken with Krause on various occasions, and to receiving a phone call from Krause seeking employment confirmation from her about Bankard. As to the phone call, she recalled providing Krause with the basic information on Bankard she provides to all employers who call seeking employment verification, to wit, the former employee's rate of pay, the position held, and the length of employment. Asked if she recalled Krause inquiring during that phone conversation if J.A. Taddei had signed a union agreement, or her telling Krause that Bankard had not obtained a union contract with J.A. Taddei, Gina Taddei stated, "I really can't verify that." As to whether she ever had any such discussion with Krause about J.A. Taddei signing a union contract, Gina Taddei was somewhat vague and contradictory. Thus, on direct examination, she recalled that Krause did bring up the subject of whether J.A. Taddei had a union contract with Bankard during a "meeting with site contractors," and that she told Krause it did not, and that J.A. Taddei had never had any such union agreement. She could not, however, recall when this latter conversation may have occurred. Asked on cross-examination if this conversation occurred at a meeting of ABC contractors, as claimed by Krause, Gina Taddei could not be sure, and "guessed" that it occurred during one of the many in-person conversations she had with Krause a couple of months after their phone conversation. (Tr. 278-279). Nor did Gina Taddei confirm Krause's claim that she told him at the ABC meeting that Bankard was paid a sum of money to go away. Thus, while on cross-examination she was asked about, and acknowledged knowing, that J.A. Taddei had entered into a settlement agreement with the Board requiring that it pay Bankard a sum of money and that it execute a project agreement with Local 524, Gina Taddei never testified to having discussed the settlement agreement or its terms with Krause at the ABC meeting or during any of the other in-person conversations she purportedly had with him.¹⁰

It is patently clear from the settlement agreement entered into between J.A. Taddei and

¹⁰ As evident by GCX-3, on November 2, 2001, J.A. Taddei signed a project agreement with Local 542 as part of an overall settlement agreement entered into with the Board to resolve, inter alia, an allegation in Case No. 4-CA-30342 that it had unlawfully refused to hire or consider for hire Bankard and another individual, Robert Schmitt because of their membership in Local 542. Under the terms of that settlement agreement, J.A. Taddei agreed to pay Bankard and Schmitt a stated sum of money, in return for which they would leave Taddei's employ by October 30, 2001, and to execute a six-month project agreement which required, among other things, that it comply with the terms of a collective bargaining agreement with Local 542. (GCX-3[d]).

the Board in November 2001, that the explanation given by Bankard in his May 5, BEI job application for leaving J.A. Taddei's employ in 2001, to wit, that he was able to work out a union agreement, was not false, as Krause asserted in his testimony, for under the terms of that settlement agreement, Bankard's employment with J.A. Taddei did come to an end as a result of that agreement which required, inter alia, that J.A. Taddei execute a "project" agreement. That the union agreement alluded to by Bankard in his application was the product of a settlement agreement entered into by J.A. Taddei with the Board does not render the project agreement entered into between J.A. Taddei and Local 542 in November 2001, in which the former agreed to be bound to Local 542's collective bargaining agreement for a period of about six months, any less of a union agreement.

Not only do I find Bankard's statement in his BEI job application as to why he left J.A. Taddei's employ in late 2001, to have been accurate, I also find unconvincing Krause's claim that he rejected Bankard for employment because he believed, erroneously so as found above, that Bankard's stated reason for leaving J.A. Taddei was false. Krause, as noted, claims his belief in this regard was prompted by statements made to him by Gina Taddei, during an employment verification phone conversation he had with her soon after receiving and reviewing Bankard's job application, wherein she expressly told Krause that J.A. Taddei had not entered into any union agreement with Bankard. While admitting having had a phone conversation with Krause about Bankard's employment with J.A. Taddei, Gina Taddei, as noted, did not corroborate, and indeed expressly admitted that she could not "verify," Krause's claim of having discussed during that phone conversation whether or not Bankard had obtained a union agreement from J.A. Taddei. Rather, her recollection, vague as it was, is of having told Krause in person, some two months later, that J.A. Taddei did not have a union agreement with Bankard. Assuming, therefore, that Krause did indeed phone Gina Taddei soon after reviewing Bankard's May 5, application to verify the latter's employment with J.A. Taddei, I do not believe, given the lack of confirmation from Gina Taddei, that the latter told Krause during that conversation that J.A. Taddei had not signed a union agreement.¹¹ Kraus' testimony regarding this matter is also undermined by Gina Taddei's failure to corroborate his further claim that during the ABC contractors' meeting, she mentioned to him that J.A. Taddei had, as part of a settlement agreement, agreed to pay Bankard a sum of money "to go away." Gina Taddei, as noted, never testified to having discussed this matter with Krause at the ABC contractors' meeting. In short, the lack of corroboration from Gina Taddei, as well as Krause's generally poor demeanor on the witness stand and the contradictions in his testimony, leads me to reject as not credible Krause's claim that he rejected Bankard for employment on learning from Gina Taddei during the employment verification phone call that Bankard lied on his May 5, BEI application about having obtained a union agreement with J.A. Taddei.

Bankard testified that on June 2, he phoned the Respondent to inquire about his application and asked to speak with someone in Human Resources. When the receptionist asked the reason for his call, Bankard explained that he had filled out an application about a month ago and had not yet heard anything. The receptionist, he contends, put him through Krause's voicemail and Bankard left Krause a message stating that he was still looking for, and

¹¹ Krause admitted that he did not accurately describe to Gina Taddei what Bankard declared on his May 5, application as the reason for leaving J.A. Taddei's employ. Thus, while Bankard stated in his application that he left J.A. Taddei because he was able to "work out a union agreement," Krause purportedly asked Gina Taddei during their alleged phone conversation if J.A. Taddei had "signed" a union agreement. Bankard, as evident from his application, never claimed to have signed a union agreement with J.A. Taddei, only that a union agreement had been worked out.

willing and able to, work. Bankard, however, never received any follow up calls from the Respondent, nor was he offered any position following his May 5, application.

On June 26, in response to another help-wanted ad for equipment operators placed by the Respondent in a local newspaper the day before (see GCX-9), Bankard, Borgmann and other union representatives went to the Respondent's facility to apply for work. When Bankard told the receptionist they were there to fill out applications, the receptionist replied that the Respondent was not hiring and was not handing out applications for operators. Bankard asked why not, at which point Brubacher arrived and asked, "What do you guys want?" Bankard and the others responded that they were there to fill out job applications. Brubacher purportedly asked, "All of you?", and Bankard responded, "Yeah." Union organizer Robert Walsh, who had accompanied Bankard and the others to the Respondent's facility, told Brubacher he too was seeking an application, to which Brubacher asked, "You with these guys?" When Walsh said he was, Brubacher threw his hands up in the air and walked away. Brubacher, Bankard contends, returned shortly thereafter, and moments later, Bankard and the others were given job applications to fill out. As he was filling out his application, Bankard asked the receptionist if he could simply update his earlier application, but was told no by the receptionist because the applications were only good for thirty days.

Krause walked in soon thereafter and Bankard asked him why the Respondent discarded the old applications. Krause purportedly replied that the applications are not thrown out but rather retained so he, Krause, could compare them with past applications submitted by an applicant to see if there were any changes made to it. (Tr. 147). Bankard then asked if friends and relatives of applicants received any preferential treatment. Krause answered they did not because employees are fearful that if someone they recommend does not work out, it would look bad on them. Bankard purportedly also commented that he had already been to the Respondent several times looking for work and had yet to receive an interview, and asked Krause when he could expect to be interviewed. Krause allegedly replied, "We're working on that," and walked away. Bankard claims that at no time during his discussion with Krause that day did Krause raise the subject of his prior employment with J.A. Taddei, or make any mention of J.A. Taddei.

Krause recalled Bankard, Borgmann and others coming in and applying for work on June 26, and engaging in some small talk with Borgmann. Borgmann, he contends, asked Krause how his brother, who apparently had been bitten by a snake, was doing, and Krause replied he was doing fine. Krause claims he then asked Borgmann about the 26 employees who, Borgmann stated at the PCT career fair, were leaving the Respondent. Krause purportedly commented, somewhat sarcastically by his own admission, that "It's been some time now that these guys filled out applications, how come they never left? It's in the middle of the season for our type of work." Borgmann answered, "Well, the weather's bad. They're not going to be working with us now because of all the rain we're having." Krause claims that following Borgmann's remark, Bankard commented that if Krause couldn't figure that out, it would explain why Krause had not passed the Boilermaker's apprenticeship test. Krause purportedly just looked at Bankard and said, "Oh, got a little dig on me there." Krause did not recall much more of what was said that day. Thus, he did not recall telling Bankard that job applicants who were referred by friends or relatives employed by the Respondent do not receive preferential treatment, although he contends that he would not have said this to Bankard because the Respondent, at the time, did have a referral bonus program. (Tr. 451-452).

Bankard claims that on August 5, after seeing an ad by the Respondent in the local newspaper, he called the Respondent to inquire about applying for the advertised position of laborer. The person who answered the phone then put him through to Krause who, apparently

not recognizing it was Bankard, asked Bankard about his level of experience and previous employers. Bankard made up some fictitious names of employers. Krause then asked who Bankard was working for at the time, and Bankard replied he was with J.A. Taddei. Krause purportedly replied that he had never heard of J.A. Taddei, and when he asked what Bankard did at J.A. Taddei, the latter stated he was operating heavy equipment. When asked for his name, Bankard simply told Krause his name was "Frank." Krause then said to Bankard, "Can you get out here Frank, right away, to fill out an application for us?" Bankard replied he could be there within the hour, and when he asked Krause if he would be there when he arrived, Krause said he would, and that he would be interviewing Bankard and possibly field-testing him when he got there. Bankard asked if this was to be an immediate hire, and Krause purportedly responded that it was. When Bankard further asked if he was looking for people right away, Krause said he was, and that he needed two operators immediately. Bankard told Krause that he had a laborer friend who, like him, was in need of additional work and Krause told Bankard to bring the friend along and he would interview both of them. (Tr. 149-150).

Bankard then went to the Respondent's office, accompanied by Borgmann and two laborers from Local 57, Walter Bennett and Mickey Robinson, and, on arriving, asked the receptionist for applications. The receptionist, Bankard claims, asked them if they were there applying for operators' positions. Bankard replied that only one was applying for a laborer's position, the others were there for operators' positions. When the receptionist stated that the Respondent had not advertised for laborers, Bankard asked her to notify Krause that "Frank" was there to see him, and told the receptionist that he had been asked by Krause to bring the laborer applicant, presumably Robinson, with him. The receptionist then handed applications to all three and Bankard instructed Robinson to write on his application that he filled it out on instructions from Krause. Bankard next asked the receptionist if she had called Krause and the latter replied that she had but that Krause was not available at the moment. Bankard then gave the receptionist his business card, which identified him as an organizer for Local 542, to give to Krause. As he waited for the others with him to complete their applications, another woman appeared and told Bankard that Krause had to leave and would not be able to talk to him. Bankard stated that this would not be a problem as he was in the area and could come back in couple of hours. The woman replied that she did not know if Krause would ever come back. Bankard claims that Krause never called him back and that he never received an interview or a job offer from the Respondent. He contends that after this last application, he never again applied for work with the Respondent, even though the Respondent continued placing ads in the local newspapers seeking workers. (Tr. 152-153; GCXs:10-13).

3. Ellison's job applications with BEI

On March 24, Ellison learned from Operating Engineers organizer and vice-president, Portman, that the Respondent was looking to hire pipe laborers, concrete laborers, and other positions. Ellison went to Respondent's office that day wearing a cap with a Local 57 logo on it and submitted an application for employment as a concrete laborer. (See GCX-4). On his job application, Ellison listed MAROC as his current employer and identified his job title as an organizer for MAROC. Where the application called for him to list his street address, Ellison wrote down "1375 Virginia Dr., Fort Washington, PA," the address for the Operating Engineers and MAROC. He explained that he did not put down his personal residence as his street address for safety reasons, further explaining that he had been told at union training classes that it was best not to list his personal residence to avoid employers investigating his activities or taking pictures of him. Ellison was not hired following his March 24, application.

Ellison again applied for work with Respondent on April 3 (GCX-5). On this application, Ellison listed his personal residence under "Street address," explaining that he did so because

he assumed that the Respondent already knew that the Ft. Washington address was the location of the union offices. Ellison was again not hired.

On April 9, Ellison was shown an advertisement placed by Adecco in a local newspaper indicating that BEI was looking to hire individuals for various laborer and operator positions (GCX-18). Ellison placed a call to Adecco and received an appointment to meet with someone at Adecco on April 16. On April 16, Ellison, accompanied by MAROC organizers Malcolm Nube, Anthony Jacobs, and Mickey Robinson, went to Adecco and applied for the available positions. A few days later, on April 22, Ellison received a call from Adecco telling him he had been hired by Adecco and assigned to BEI. The next day, Ellison went to the Respondent's jobsite to which he was assigned and reported to Respondent's site superintendent, Larry Wright. Ellison put in about eight hours work that day doing grading for the Respondent. On April 24, Ellison received a phone call from Adecco informing him that the Respondent liked his work and asked if he could return to work the next day. Ellison agreed to do so and, on April 25, reported to Wright at what he believes was a jobsite at a Triborough Mall. Ellison worked about eight and one-half hours that day, after which he got Wright to sign the pay slips required by Adecco in order to get paid for his work.

Ellison recalls Wright placing a phone call to someone, whom he believed to be Krause, at BEI on April 25, on his behalf because Wright, according to Ellison, wanted to hire him on a permanent basis. Ellison claims that on April 28, based on instructions from Wright, he went to the Respondent's office, accompanied by Nube, to apply for work. On arriving at the Respondent's office, Ellison explained to the secretary at the front desk that he had been sent there by Wright to apply for permanent employment, and that he was to speak with Krause. The secretary, he contends, left for a few minutes and then returned and told Ellison that the Respondent did not hire from Adecco. Ellison apparently left at that point. He claims that he thereafter continued to receive job assignments from Adecco to various other employers.

Regarding the Respondent's policy on the receipt of job applications, Krause testified that he rejects outright, and gives no consideration to, any application that is not completely filled out or that contains false or incorrect information, and that he has done so in the past with other applicants (Tr. 428).¹² His reasoning in this regard is that "If [applicants] can't fill out their application out properly, there's no reason to hire them" (Tr. 460). He also testified that applications received are deemed valid only for 30 days, and receive no further consideration after that initial 30-day period. However, when presented with specific examples of applicants who were hired months after the submission of their job applications, Krause conceded that there were times when he "deviated" from that policy. He was also forced to admit that the Respondent had hired certain individuals who had not completely filled out their applications or who had omitted certain information, notwithstanding his prior claim that he gives no consideration to any application that has not been completely filled out.

Krause claims that on receipt of Ellison's March 24, application, he recognized the address listed therein as belonging to Local 542, and concluded that Ellison had falsified the application by listing that address as his own. He acknowledged learning that Ellison was a union organizer some two months earlier, and that his application identified Ellison as a union

¹² Although Krause claims to have rejected applications from individuals that contained "a wrong" or "a false" address, he did not explain or make clear just what would have constituted a "correct" address. On brief, however, the Respondent appears to suggest that applicants were expected or required to list their personal residence on the "street address" portion of its application.

organizer. He also acknowledged that at the time Ellison was applying for work with Respondent, the latter was involved in some form of dispute with MAROC (Tr. 437). He insists, however, that he rejected Ellison's job application solely because of Ellison's dishonesty and that Ellison would have been rejected for this reason even if he had not been a union organizer.

5 Krause did not call Ellison to inform him that his application had been rejected. The Respondent concedes that Ellison was otherwise qualified for the positions for which he applied.

Although Ellison, according to Krause, was ineligible for employment allegedly for having "falsified" his March 24, application, Krause nevertheless testified that he reviewed Ellison's subsequent April 3, application to see if there were any differences between the two applications. Krause purportedly found some differences in both applications.¹³ He noted, for example, that Ellison had listed a different address on the April 3, application, and that the driver's license number listed by Ellison on this later application was different from that shown on his March 24, application. (Tr. 435).

15 Krause admits knowing of Ellison's April 28, visit to the Respondent's office. He testified that he found out that Wright had sent Ellison to him, and was somewhat bewildered at how Wright knew of Ellison. He inquired of the dispatcher and learned that Ellison had been referred by Adecco. Krause claims that after learning that Ellison had been sent by Adecco, he called a Sherri Green, his contact person at Adecco, and, after identifying himself and telling Green that he had just learned of their referral of Ellison, told Green that he did not want Adecco referring Ellison to any more of BEI's jobsites. According to Krause, he explained to Green that Ellison had submitted an application for employment with the Respondent, and that the latter had already ruled Ellison out for any future employment for falsifying his application. Green, he contends, then questioned why Ellison would have falsified a job application, to which he purportedly replied, "There's a number of different reasons why," and proceeded to explain that Ellison was a union organizer who engaged in "salting" operations against employers.¹⁴ Ellison, he purportedly told Green, was not interested in obtaining a job with Brubacher, and did not care if he did or did not get hired because he simply wanted to cost the Company money. (Tr. 434).

30 Krause claims he told Green that while the Respondent has the option of permanently hiring those employees sent to it by Adecco who have worked for Respondent for 440 hours, he did not want to waste the Respondent's time on Ellison. Krause denies telling Green that the

35 ¹³ Krause's explanation for reviewing the April 3, application, after a firm decision had been made by him not to hire Ellison based on his first application, was not convincing. Asked again by the judge to explain why he looked at the April 3, application, Krause stated that it was "just out of curiosity," that he had "no real reason" for doing so, and that he was just looking at it to "confirm my first instincts really" that Ellison was not "being honest and truthful." (Tr. 436). I found Krause's explanation in this regard not to be credible. While I am inclined to believe that

40 Krause had some other, less benign, reason for reviewing Ellison's April 3, application, e.g., to see if he could find some other shortcomings in the application so as to justify not having to hire him, the complaint, it should be noted, does not allege, nor does the General Counsel contend, that there was anything unlawful or necessarily improper in the Respondent's refusal to hire Ellison based on those applications.

45 ¹⁴ Krause fairly accurately described "salting" as "a tactic whereby union organizers come into a company to complete applications to get hired, to complete applications so they can possibly be hired so they can organize individuals within the company." He personally viewed "salting" as deleterious to companies in that it could cost them money by having to defend against unfair labor practices. (Tr. 468). He described salting by a union as an "unscrupulous"

50 and "nefarious union pressure tactic" which he equated with terrorism (Tr. 469). However, he did not view union salting as being "anti-American," as did Brubacher.

Respondent did not want Ellison because he was a union organizer. (Tr. 434).

Green did not testify.¹⁵ However, Melissa Hurlburt, Adecco's Regional Administrative Manager, was subpoenaed to testify. Hurlburt oversees several of Adecco's offices and supervises between 20-25 Adecco employees, and is Adecco's custodian of records. She testified that Green had worked for Adecco as its customer service manager at Adecco's Reading, PA office. In that position, Green, she explained, would likely have handled some twenty calls a day from clients such as BEI. According to Hurlburt, Adecco maintains computer files on all employees that are updated on a daily basis to record communications Adecco may have with employees or with a client who may call regarding an employee.

Hurlburt testified that Adecco's practice and policy was that, on receiving a call from a client such as BEI, the customer service manager, or whoever answers the phone at Adecco, will pull up the client's file on the computer or, if they are calling regarding an employee, the employee file maintained by Adecco, and record what was said or discussed during that phone conversation as the phone conversation was occurring, or as soon as possible after the call is ended. (Tr. 63).

Hurlburt produced Ellison's employment file containing an entry purportedly made by Green on April 29, at around 3:18 p.m., referencing instructions she received from Krause regarding Ellison. (See GCX-2[p]). The entry, found on next to the last page of GCX-2(p), reads:

"DNU-per jason krause at Brubacher this assoc is a 'spy' from a construction union in NJ/Phila. They infiltrate companies, try to turn assoc's into wanting a union, and organize picketts [sic] to harass companies into turning into union shops. This assoc has applied to brubacher directly several times using different mailing addresses. Some addresses are the actual address of union halls. Trying to cause trouble. DO NOT PLACE THIS ASSOC! WHEN ASSOC CIA, JUST TELL HIM THERE'S NO NEW WORK AVAILABLE."¹⁶

While Krause, as noted, denied telling Green that the Respondent would not hire Ellison because of his union affiliation, he did not specifically deny the comments attributed to him by Green in GCX-2(p).¹⁷

While it is unclear from the record whether Ellison would have continued to receive work assignments from Adecco to BEI jobsites but for Krause's April 29, instructions, the record, in

¹⁵ Green was apparently terminated for reasons unknown and, at the time of the hearing, was no longer employed by Adecco.

¹⁶ The letters "DNU" in the entry stand for "do not use" and mean that Adecco is not to send the employee, in this case Ellison, back to the Respondent. The letters "CIA" stand for "calls in available". GCX-2(p) along with the other documents which make up GCX-2, was properly identified by Hurlburt as a business record maintained by Adecco in the ordinary course of business. As such, it falls within the business record exception to the hearsay rule and, consequently, was received into evidence over the Respondent's objection. (Tr. 88-89).

¹⁷ Krause's description of his phone conversation with Green came during his direct examination by Respondent's counsel on the third day of the hearing, long after GCX-2(p) was received into evidence over the Respondent's objection on day one of the hearing. The Respondent's counsel thus had ample opportunity to show Krause, and to have him expressly refute, deny, or explain, the comments attributed to him by Green in GCX-2(p).

particular Krause's testimony, reflects that Adecco, in fact, referred numerous other employees to BEI jobsites between April 28, and September 15.¹⁸ It is reasonable to assume, therefore, that but for Krause's April 29 instructions to Green, Adecco would have continued referring Ellison to BEI jobsites after that date.

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B. Discussion

1. The Section 8(a)(1) allegations

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The complaint, as noted, alleges that Brubacher's March 20, statement to Bankard and Borgmann, that he "wouldn't hire them as long as he was alive," and his May 5, remark to Bankard to "Go screw yourself," were coercive and unlawful. Regarding the March 20, remark attributed to Brubacher, the latter, as previously discussed and found, did in fact say to Bankard, during their March 20, encounter at the PCT career fair, that, as long as he was alive, he would

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"never hire or use any of your people," referring to Bankard and other Local 542 members.

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The Board has held that an employer's statement to job applicants, like the one made by Brubacher to Bankard on March 20, that it would be futile for union members to apply for employment, is coercive and violates Section 8(a)(1) of the Act. *Sunland Construction Co.*, 311 NLRB 685 (1993); also *JS Mechanical, Inc.*, 341 NLRB No. 46 (2004) and *Corporate Interiors, Inc.*, 340 NLRB No. 85 (2003), citing *Sunland Construction*, supra. That Bankard may not actually have been applying for work with the Respondent when Brubacher made his remark does not diminish the coercive nature of the remark or render it lawful. Brubacher, as noted from Bankard's credited account, made his remark after accusing Bankard of being so

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audacious as to believe that the Respondent would ever consider hiring any Local 542 members at its jobsites. In making his remark, Brubacher was clearly conveying the message to Bankard, and presumably other Local 542 members who were nearby and heard it, that as far as employment with the Respondent was concerned, union members need not apply, and that their submission of job applications would be an exercise in futility. In sum, I find, as

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alleged in the complaint and as argued by the General Counsel, that Brubacher's March 20, comment was unlawful and violated Section 8(a)(1) of the Act.

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As to the further Section 8(a)(1) allegation that Brubacher, on May 5, told Bankard to "go screw" himself, that statement, as previously found, was never made by Brubacher. Accordingly, dismissal of this allegation shall be recommended.

2. The Section 8(a)(3) allegations

(a) *The refusal to hire Bankard*

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The complaint, as noted, alleges that the Respondent's refusal to hire Bankard was discriminatorily motivated by antiunion reasons and thus unlawful. In *FES, A Division of Thermo Power*, 331 NLRB 9 (2000), the Board held that to establish a discriminatory refusal to hire, the General Counsel must, under the allocation of burdens set forth in *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982),¹⁹ first show the

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¹⁸ Contrary to the General Counsel's assertion on brief (RB:23, fn. 69), Krause's testimony is that approximately 83 employees were referred to BEI by Adecco from March 24 (not April 28) through September 15 (see Tr. 494).

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¹⁹ The causation test established by the Board in *Wright Line*, supra, requires the General Counsel, as part of his burden of proof, to establish that an alleged discriminatee had engaged

Continued

following at the hearing on the merits: (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicant had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. If the General Counsel is able to make such a showing, the burden shifts to the Respondent to demonstrate that it would not have hired the union applicant even in the absence of union affiliation.

There is no disputing that when Bankard applied for work on May 5, the Respondent was hiring or planning to hire workers, as it had, the day before, placed an ad in the *Reading Eagle* seeking drivers and operators, positions for which Bankard, as the Respondent readily admitted, was duly qualified. The Respondent in fact hired numerous individuals to those positions during the period after May 5. Thus, the record shows that between May 5, and September 16, the Respondent hired some fifteen operators and five drivers (see JX-1; Tr. 216). It is patently clear, therefore, that the Respondent had positions to which it could have hired Bankard on May 5. It is also clear that the Respondent harbored strong animosity towards Bankard in particular, and to unions in general, as evident from Brubacher's March 20, remark to Bankard, that he would never hire Bankard or any other member of Local 542 as long as he lived, see, *Network Dynamics Cabling, Inc.*, 341 NLRB No. 107 (2004); *Galloway School Lines, Inc.*, 321 NLRB 1422, 1424 (1996), and from Brubacher's and Krause's characterization of unions as "terroristic" and "anti-American" organizations and as "instruments of economic destruction." On these facts, I find that the General Counsel has made a prima facie showing that the refusal to hire Bankard was indeed motivated by antiunion considerations and unlawful.

The Respondent, as noted, contends that its rejection of Bankard's May 5, application for employment was justified because Bankard purportedly lied on his application by claiming that his prior employment with J.A. Taddei ended in 2001 because he "was able to work out [a] union agreement" with J.A. Taddei. Its contention in this regard, however, is without merit for, as previously discussed and found, it is based solely on Krause's discredited and uncorroborated assertion that he was told by Gina Taddei during his alleged employment verification phone call to her that J.A. Taddei did not have any such union agreement with Bankard. Although both Krause and Gina Taddei claim to have had a subsequent conversation a month or so later at which the issue of whether J.A. Taddei had entered into a union agreement with Bankard was mentioned, a claim I view with some degree of skepticism given the dubious nature of their respective testimonies, the information purportedly garnered by Krause during this later conversation did not factor into his decision to reject Bankard's May 5, job application, for Krause readily admits that his decision was based solely on the information obtained from Gina Taddei during their prior phone conversation held long before this alleged in-person discussion occurred (Tr. 532). Having rejected as uncorroborated and without merit Krause's claim that Gina Taddei told him during his job verification phone call to her that Bankard had not signed a union agreement with J.A. Taddei, I find Krause's stated reason for not accepting Bankard's May 5, job application to be patently false. Where a decision not to hire an applicant is found to be false, an inference is warranted that the real reason is one which the Respondent seeks to conceal. *FES*, supra at 26.

The only other plausible explanation evident from the record for Krause's rejection of

in union activity, that the employer knew or was aware of said activities, that it harbored antiunion animus, and that the action taken by the employer against the alleged discriminatee was motivated, at least in part, by said activities.

Bankard's job application is the latter's association with Local 542. Krause readily admitted knowing who Bankard was, and of his affiliation with Local 542, when he received and reviewed Bankard's May 5, job application. Bankard moreover made known his association with Local 542 on his job application when he identified himself as currently employed by Local 542 as an organizer. Further, Brubacher's remark to Bankard less than two months before Bankard submitted his job application, that Bankard would never be hired by the Respondent as long as Brubacher were alive, amply supports a finding that it was Bankard's association with Local 542, and not any false statement he purportedly made on his job application, which prompted Krause to reject Bankard for employment. Thus, assuming, arguendo, that Gina Taddei did mention to Krause at an ABC employers' meeting that J.A. Taddei had not entered into any union agreement with Bankard while the latter was employed by J.A. Taddei in 2001, I am convinced that Krause, having already decided not to hire Bankard because of his affiliation with Local 524, simply seized upon Gina Taddei's remarks to him at this ABC meeting to justify his erstwhile unlawful decision by claiming that Bankard had falsified his job application. In sum, Krause's explanation for not hiring Bankard is found to be nothing more than a pretext. It follows, therefore, that the Respondent has not satisfied its burden under *FES* and *Wright Line*, supra, of showing that it would not have hired Bankard based on his May 5, job application even if he had not been affiliated with or a member of Local 542. *Casino Ready Mix, Inc.*, 335 NLRB 463, 465 (2001); *Shannopin Mining Company*, 302 NLRB 791, 794 (1991). Accordingly, the Respondent's refusal to hire Bankard is found to have violated Section 8(a)(3) and (1) of the Act, as alleged.²⁰

*(b) The refusal to accept Adecco's
referral of Ellison for employment*

The complaint further alleges that the Respondent violated Section 8(a)(3) and (1) by notifying Adecco on April 29, that it no longer wanted Ellison referred to any of BEI's jobsites. The General Counsel, I find, has made a strong prima facie showing under *Wright Line*, supra, that the Respondent's refusal, as of April 29, to accept any more job referrals of Ellison by Adecco was motivated by his activities on behalf of, and association with, MAROC. Ellison's involvement with MAROC, and his activities in attempting to organize the Respondent, is fairly well-established in the record, as is the Respondent's knowledge of his activities. Krause, as

²⁰ The Respondent's further contention, that no violation should be found because Krause's rejection of Bankard's application was based on a good faith and reasonable belief that Bankard lied on his application, is without merit, for the only evidence that might support such a contention is Krause's assertion, which I have rejected as being neither credible nor corroborated by Gina Taddei, that he rejected Bankard's application based Gina Taddei's statement to him during his employment verification phone call to her that J.A. Taddei did not have a union agreement with Bankard. Gina Taddei, as previously discussed, did not corroborate Krause's assertion in this regard. Rather, she was only able to confirm that she provided Krause with such basic information about Bankard's employment with J.A. Taddei as his rate of pay, the position he held, and the length of his employment. Krause, therefore could not have had a good faith and reasonable belief that Bankard lied on his application as to why he left J.A. Taddei's employ based on what Gina Taddei may have said to him during that initial employment verification phone call, for Gina Taddei made clear that she was unable to confirm telling Krause during that phone call that J.A. Taddei had not signed or entered into a union agreement with Bankard. As previously found, Krause's claim, therefore, that he concluded from what Gina Taddei told him during that phone call that Bankard had falsified his job application, was a pure fabrication and not based on a good faith, but mistaken belief as to the true reason for Bankard's departure from J.A. Taddei's employ.

noted, readily admits knowing of Ellison's status as a union organizer since in or around February, long before Ellison first applied for employment with BEI on March 24, and before Krause's April 29, notification to Adecco that he did not want Ellison referred to BEI jobsites. Ellison also made his association with MAROC known on his March 24, BEI job application, a fact that could not have escaped Krause's attention. Thus, Krause obviously would have noticed the reference to MAROC when he first reviewed Ellison's March 24, application and observed that Ellison had listed his office address under "street address," and when, by his own admission, he compared the second application for employment Ellison submitted on April 3, to the latter's March 24, application to see if there were any differences. As to the Respondent's union animus, evidence of such animus was discussed and established in connection with the refusal-to-hire allegation involving Bankard and will not be repeated here. As the General Counsel has made a prima facie showing that the Respondent's refusal to accept any more job referrals of Ellison by Adecco was motivated by antiunion considerations, the burden now shifts to the Respondent to show that it would taken the same action even if Ellison had not been a union supporter.

The Respondent, as noted, insists that its decision to not accept any more referrals of Ellison from Adecco was solely and lawfully motivated by its belief that Ellison had falsified his application by listing his office, rather than his home, address as his "street address" on the March 24, job application. While there is no question that Ellison listed his business address as his "street address" on the application, there are strong reasons for doubting that it was this particular factor which prompted Krause to reject Ellison's March 24, job application and to notify Adecco on April 29, not to refer Ellison to anymore BEI jobsites. There is, first of all, Krause's overall lack of credibility. Krause, as noted, was not truthful when, in connection with Bankard's application, he claimed to have been told by Gina Taddei, during his job verification phone call to her, that J.A. Taddei had not entered or signed a union agreement with Bankard. Nor was he particularly candid in explaining why he had bothered to look at Ellison's April 3, application after having rejected Ellison for employment based on the latter's March 24, application. Krause's lack of credibility also became apparent when he conceded, on cross-examination by the General Counsel, that his claim about job applications remaining valid for only 30 days, and about how he rejects outright job applications containing omissions or which are not fully completed are rejected outright, was not entirely true.

Nor did I find credible the Respondent's suggestion on brief that applicants were expected or required to identify their actual home address under the "street address" section of its application, and that the insertion of something other than an actual home address would be tantamount to a falsification of the application. In so finding, I note that when asked what he would do if an applicant simply listed a P.O. Box as his "street address," Krause explained that he had never before been presented with such a scenario but acknowledged that he would not know what to do in such a case. His ambivalence as to what he would do in such a case is difficult to understand and, in my view, casts doubt on the Respondent's intimation on brief that applications that do not contain an applicant's actual address are rejected, for a P.O. Box, which is nothing more than a box at a local U.S. post office to which mail is sent in lieu of an actual home address, hardly qualifies as an actual home address. As such, an application containing only a P.O. Box as a "street address" would, according to the Respondent's argument, have to be rejected as wrongly filled out or falsified, and Krause's confusion as to what he would do under such circumstances leads me to believe that neither Krause nor the Respondent had any hard and fast rule on what applicants could use as their "street address" on a BEI application. Although Krause, as noted, claimed to have rejected applicants in the past for putting "the wrong address or a false address" on their applications, no evidence was produced to substantiate this very general and rather dubious claim by Krause as to what he has done in the past. Krause's testimony in this regard was simply not believable.

In sum, Krause's explanation for refusing to accept any more referrals of Ellison from Adecco, e.g., because Ellison had purportedly falsified his March 24, application by listing his office, rather than a home, address as his "street address," is found not to be credible. Rather, I find Krause's explanation to be nothing more than a pretext designed to conceal some other, unlawful reason. The Respondent's true motivation for its April 29, decision to stop accepting Adecco's referral of Ellison can best be gleaned from the comments, which I find Krause made to Adecco's Sherri Green on April 29, and which the latter duly recorded in Ellison's personnel file in the normal course of the performance of her duties and as required by Adecco, to the effect that the Respondent did not want Adecco to refer Ellison because Ellison was a union "spy" who simply wanted to "infiltrate" companies so as to organize their employees and turn the companies into union shops. Although Krause provided his own version of what he purportedly told Green, including describing Ellison to Green as a union "salt," telling her Ellison did not really want to work for BEI, and that Ellison was simply interested in costing BEI money, he did not expressly refute the comments attributed to him in Green's notes. Krause, in any event, was not a credible witness. The comments made by Ellison to Green on April 29, together with the other previously-discussed evidence of antiunion animus, leads me to conclude, especially in light of the pretextual reason proffered by Krause for refusing to accept Adecco's referral of Ellison, that it was Ellison's association and involvement with MAROC which led the Respondent to notify Adecco on April 29, that it would no longer accept any referrals of Ellison to its jobsites. As the Respondent has not come forth with a legitimate, nondiscriminatory reason for its decision, it has not rebutted the General Counsel's prima facie case. Accordingly, the Respondent's refusal since April 29, to accept any more referrals by Adecco of Ellison to BEI jobsites is found have violated Section 8(a)(3) and (1) of the Act.

Conclusions of Law

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Operating Engineers, Local 542, AFL-CIO, and Mid-Atlantic Regional Organizing Coalition a/w Laborers International Union of North America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act when its owner, Brubacher, told Local 542 organizer Frank Bankard and other union representatives that it would never hire them as long as he was alive.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by refusing since May 5, to hire Bankard because of his affiliation with and membership in Local 542, and by refusing, since April 29, to accept Adecco's referral of Ellison for employment because of his association with and membership in MAROC.

5. The above-described unfair labor practices engaged in by the Respondent's affect commerce with the meaning of Section 2(6) and (7) of the Act.

6. Except as found herein, the Respondent has not engaged in any other unfair labor practices.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy its unlawful refusal to hire Bankard, the Respondent shall be required to, within 14 days from the date of the Order, offer him employment to the position for which he applied on May 5,²¹ or, if said position is no longer available or does not exist, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges he would have enjoyed but for the Respondent's discriminatory refusal to hire him. The Respondent shall also be required to make Bankard whole for any loss of earnings and other benefits he may have sustained as a result of the discrimination against him, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²²

As to its unlawful April 29, instructions to Adecco not to refer Ellison for employment at BEI sites, the Respondent shall be required to, within 14 days of the Order, notify Adecco that it no longer objects to such referrals. Further, to the extent Ellison was denied work opportunities at BEI jobsites as a result of the Respondent's April 29, directive, the Respondent shall be ordered to make Ellison whole for any loss of earnings or other benefits he may have suffered due to the Respondent's unlawful conduct, as prescribed in *F. W. Woolworth*, supra, with interest thereon to be computed in accordance with *New Horizons for the Retarded*, supra.²³

Finally, the Respondent shall be required to, within 14 days from the date of the Order, remove from its files any and all references to its unlawful refusal to hire Bankard, and to its unlawful ban on Ellison's referral by Adecco to BEI jobsites, and, within 3 days thereafter, to notify Bankard and Ellison that this has been done and that the unlawful conduct directed at them will not be used against them in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁴

²¹ Bankard's May 5, application shows he applied for a "CDL Truck Driver" or "Equipment Operator" position.

²² Because the Respondent is engaged in the construction industry, I recommend, consistent with the Board's holding in *Dean General Contractors*, 285 NLRB 573 (1987), that the Board leave to the compliance stage of the proceeding the question of whether Bankard would have continued in the Respondent's employ following completion of the project for which he would have been hired. See, *Network Dynamics Cable*, 341 NLRB No. 107, slip op. 1, fn. 2 (2004).

²³ Given that Ellison had been referred to and worked at BEI jobsites on two occasions just prior to the Respondent's April 29, unlawful directive to Adecco, one can reasonably assume that but for that directive, Adecco would more likely than not have continued referring Ellison for employment to BEI jobsites. However, the question of what and/or how many, if any, additional work assignments to BEI jobsites Ellison might have received but for the Respondent's unlawful conduct is one that can best be determined at the compliance stage of this proceeding.

²⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Brubacher Excavating, Inc., Bowmansville, PA, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling potential union member job applicants that it would never hire union members.

(b) Refusing to hire job applicants because of their membership in or association with International Union of Operating Engineers, Local 542, AFL-CIO.

(c) Refusing to accept Adecco's referral of Ellison, or any other Adecco employee, for employment to its jobsites because of their membership in or association with Mid-Atlantic Regional Organizing Coalition a/w Laborers' International Union of North America, AFL-CIO.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Order, offer Frank Bankard employment to the position for which he applied on May 5. If said position is no longer available or no longer exists, offer him employment to a substantially equivalent position, without prejudice to the seniority or any rights and privileges he would have enjoyed had he not been unlawfully denied employment.

(b) Within 14 days from the date of the Order, notify Adecco that it does not oppose or object to its referral of Perry Ellison for employment to any of its jobsites, and notify Perry Ellison in writing that it has done so.

(c) Make Frank Bankard and Perry Ellison whole for any loss of wages or other benefits they may have sustained as a result of the discrimination practiced against them because of their union activity, in the manner described in the Remedy section of this decision.

(d) Within 14 days from the date of the Order, remove from its files any and all reference to its refusal to hire Frank Bankard and to accept any referrals by Adecco of Perry Ellison to its jobsites, and, within 3 days thereafter, notify Bankard and Ellison in writing that this has been done and that its unlawful conduct will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Bowmansville, PA, copies of the attached Notice marked "Appendix."²⁵ Copies of the Notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since March 20, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(h) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C.

George Alemán
Administrative Law Judge

²⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT tell potential union member job applicants that we will never hire union members.

WE WILL NOT refuse to hire job applicants because of their membership in or association with International Union of Operating Engineers, Local 542, AFL-CIO, or any other labor organization.

WE WILL NOT refuse to accept referrals for employment from Adecco of Perry Ellison, or any other Adecco employee, because of his membership in, or association with, Mid-Atlantic Regional Organizing Coalition a/w Laborers' International Union of North America, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Frank Bankard employment to the position for which he applied or, if that position is no longer available or does not exist, to a substantially equivalent position without prejudice to the seniority or any other rights and privileges to which he would have been entitled but for our discriminatory refusal to hire him.

WE WILL notify Adecco that we do not oppose or object to its referral of Perry Ellison for employment to our jobsites, and **WE WILL** notify Perry Ellison, in writing, that we have done so.

WE WILL make Frank Bankard whole for any losses he may have suffered as a result of our unlawful refusal to hire him, with interest, and make Perry Ellison whole for any losses he may have suffered due to our refusal to accept Adecco's referral of Ellison for employment to our jobsites, with interest.

WE WILL remove from our files any reference to our unlawful refusal to hire Frank Bankard and our refusal to accept Adecco's referral of Perry Ellison for employment, and shall notify Bankard and Ellison in writing that we have done so and that our discriminatory treatment of them will not be used against them in any way.

BRUBACHER EXCAVATING, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

615 Chestnut Street, One Independence Mall, 7th Floor, Philadelphia, PA 19106-4404

(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-7643.